TESTIMONY OF DAVID L. WRAY, PRESIDENT, PROFIT SHARING / 401K COUNCIL OF AMERICA,

BEFORE THE SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS REVIEW OF CURRENT INVESTIGATIONS AND REGULATORY ACTIONS REGARDING THE MUTUAL FUND INDUSTRY: FUND OPERATIONS AND GOVERNANCE

MARCH 2, 2004

TESTIFYING ON BEHALF OF:

ASPA

ASSOCIATION FOR FINANCIAL PROFESSIONALS

AUTOMATIC DATA PROCESSING, INC.

COMMITTEE ON INVESTMENT OF EMPLOYEE BENEFIT ASSETS

THE ERISA INDUSTRY COMMITTEE

FLINT INK CORPORATION

FLORIDA POWER & LIGHT COMPANY

HEWITT ASSOCIATES

ICMA RETIREMENT CORPORATION

INTEL CORPORATION

PROCTER & GAMBLE

PROFIT SHARING / 401K COUNCIL OF AMERICA

SMALL BUSINESS COUNCIL OF AMERICA

SUNGARD CORBEL

Thank you for this opportunity to share the views of the employer-provided retirement plan system with the committee. My comments reflect the views of the companies and organizations listed on the transcript of my statement. As we all know, mutual funds play a key role in the employer-based system. According to the Investment Company Institute, 36 million U.S. households invest one third of all mutual fund assets through employer provided retirement plans. Like this committee, we are concerned by the breaches of trust that have occurred recently and we applied the efforts underway in Congress to restore confidence in our nation's financial institutions.

Late trading must be eliminated. At the same time, it's important that we preserve a level playing field for the ability to make investment decisions using same day pricing. In most employer provided plans, investors can make trading decisions up to, or very close to, a fund's closing time, generally 4 p.m.

Eastern Time. Some have questioned if plan participants value same day pricing. I can assure you that they do as evidenced by the predominance of this feature in 401(k) plans. Like all investors, plan participants adopt a long-term savings strategy and only infrequently make changes in their investment decisions. However, when plan participants do make investment change decisions they highly value same day pricing. This is particularly true for distribution decisions upon retirement.

Same day pricing in employer provided retirement plans is possible because intermediaries are permitted to process participant trades and forward the final aggregated trades to the funds or a clearing agency after 4 PM. This late processing is necessary to ensure that all the requirements surrounding the operation of a qualified retirement plan are met, including satisfying plan features and the highly complex rules issued by the Departments of Labor and Treasury. On a more basic level, fund trade processing is always

delayed to reflect the fund's Net Asset Value for the current day – an event that does not occur until well after 4 PM.

Congress understands the need to preserve same day pricing in employer provided plans when addressing late trading. The House overwhelmingly passed HR 2420 last November. It instructs the SEC to issue rules to address late trading that permit late processing by retirement plan and other intermediaries if procedures exist to prevent late trading and such procedures are subject to independent audit. Similar provisions are found in S 1971, cosponsored by Senators Corzine, Dodd, and Lieberman; and S 2059, cosponsored by Senators Fitzgerald, Levin, and Collins. I applaud these members for their efforts and I urge this committee to move forward on this important legislative provision if the final SEC rule on late trading fails to preserve equal opportunities for all investors.

Under the SEC's proposed rule, to offer same day pricing an order must be received by the fund, its designated transfer agent, or a registered securities clearing agency by the fund's closing time. This means that a retirement plan participant's ability to enjoy full same day pricing will be based on the employer's selection of a plan's intermediary and investment choices. Employers will be pressured to adopt service provider arrangements that favor same day pricing over an open architecture design with offerings from several fund complexes. Participants could be influenced to invest in the proprietary funds of the intermediary when also offered funds from other fund complexes. Intermediaries will incur significant initial and recurring systems costs that will be borne by participants.

I commend Ann Bergin and the NSSC staff for their valiant efforts to develop a viable process to meet the SEC's clearing agency proposal. Although the clearing agency approach will provide some relief to

retirement plan participants that don't trade in a bundled provider arrangement, it will not create parity among investors. It will not accommodate all plan transactions. And, it will result in additional costs for many plan participants.

There is a preferable way to address late trading. The SEC has requested comments on an alternative approach that would allow fund intermediaries to submit properly received orders after closing time if verifiable procedures are implemented to prevent late trading. These procedures include tamper proof time stamping, certification policies, and independent audits. This approach is very similar to that in the legislation I mentioned earlier in my comments. A large majority of SEC commenters, including leading consumer organizations, support inclusion of this approach in the final rule. Several technology companies have confirmed their ability to provide the technological safeguards sought by the SEC.

I am hopeful that the SEC final rule will include this alternative approach that preserves the opportunity for same day pricing for all retirement plan participants. I repeat my request for this committee to intercede legislatively if that does not occur.

Thank you for you time. I look forward to answering your questions.